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# HOUSE BILL No. 1120

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-3-7-5; IC 6-8.1-9-14; IC 22-1-1-16; IC 22-2-15; IC 22-3-5; IC 22-4.1-4-5; IC 34-11-2-13; IC 36-1-12-1.

**Synopsis:** Employee defined classification. Provides that an individual performing services for a contractor or subcontractor on a construction project is considered to be an employee of the contractor or subcontractor, with certain exceptions. Provides for investigations of the employment relationship between an individual and a contractor or subcontractor by the department of labor, for certain procedures to be followed in investigations, and for various civil penalties to be assessed by the department of labor for the failure to properly classify individuals as employees. Provides that certain information pertaining to employee classification shared among certain state agencies is confidential. Prohibits the awarding of contracts for certain public work projects to a contractor or subcontractor for four years after the contractor or subcontractor is found to have committed certain recurring improper classifications.

**Effective:** July 1, 2010.

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**Niezgodski**

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January 5, 2010, read first time and referred to Committee on Labor and Employment.

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Second Regular Session 116th General Assembly (2010)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2009 Regular and Special Sessions of the General Assembly.

## HOUSE BILL No. 1120

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A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1       SECTION 1. IC 6-3-7-5 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 2010]: Sec. 5. (a) As used in this section,  
3 "independent contractor" refers to a person described in  
4 IC 22-3-6-1(b)(7) or IC 22-3-7-9(b)(5).  
5       (b) As used in this section, "person" means an individual, a  
6 proprietorship, a partnership, a joint venture, a firm, an association, a  
7 corporation, or other legal entity.  
8       (c) An independent contractor who does not make an election under:  
9       (1) IC 22-3-6-1(b)(4) or IC 22-3-6-1(b)(5) is not subject to the  
10       compensation provisions of IC 22-3-2 through IC 22-3-6; or  
11       (2) IC 22-3-7-9(b)(2) or IC 22-3-7-9(b)(3) is not subject to the  
12       compensation provisions of IC 22-3-7;  
13       and must file a statement with the department with supporting  
14       documentation of independent contractor status and obtain a certificate  
15       of exemption under this section.  
16       (d) An independent contractor shall file with the department, in the  
17       form prescribed by the department, a statement providing the following



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information:

(1) The independent contractor's name, trade name, address, and telephone number.

(2) The independent contractor's federal identification number or Social Security number.

(3) The name and:

(A) Social Security number;

(B) federal employer identification number (FEIN); or

(C) taxpayer identification number (TIN);

of each person or entity with whom the independent contractor has contracted.

(e) Along with the statement required in subsection (d), an independent contractor shall file annually with the department documentation in support of independent contractor status before being granted a certificate of exemption. The independent contractor must obtain clearance from the department of state revenue before issuance of the certificate.

(f) An independent contractor shall pay a filing fee of ~~five~~ **twenty-five** dollars (~~\$5~~) (**\$25**) with the statement required in subsection (d). The fees collected under this subsection shall be deposited into a special account in the state general fund known as the independent contractor information account. Money in the independent contractor information account is annually appropriated to the department for its use in carrying out the purposes of this section.

(g) The department shall keep each statement and supporting documentation received under this section on file and on request may verify that a certificate of exemption is on file.

(h) The certificate of exemption required by this section must be on a form prescribed and provided by the department. A certificate issued under this section is valid for one (1) year. The department shall maintain the original certificate on file.

(i) A certificate of exemption must certify the following information:

(1) That the independent contractor has worker's compensation coverage for the independent contractor's employees in accordance with IC 22-3-2 through IC 22-3-7.

(2) That the independent contractor desires to be exempt from being able to recover under the worker's compensation policy or self-insurance of a person for whom the independent contractor will perform work only as an independent contractor.

(j) The department shall provide the certificate of exemption to the person requesting it not less than seven (7) business days after

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1 verifying the accuracy of the supporting documentation. To be given  
 2 effect, a certificate of exemption must be filed with the worker's  
 3 compensation board of Indiana in accordance with IC 22-3-2-14.5(f)  
 4 and IC 22-3-7-34.5(g).

5 (k) Not more than thirty (30) days after the department receives a  
 6 independent contractor's statement and supporting documentation and  
 7 issues a certificate of exemption, the department shall provide the  
 8 independent contractor with an explanation of the department's tax  
 9 treatment of independent contractors and the duty of the independent  
 10 contractor to remit any taxes owed.

11 (l) The information received from an independent contractor's  
 12 statement and supporting documentation is to be treated as confidential  
 13 by the department and is to be used solely for the purposes of this  
 14 section.

15 ~~(m) A contractor who knowingly or intentionally causes or assists~~  
 16 ~~employees, including temporary employees, to file a false statement~~  
 17 ~~and supporting documentation of independent contractor status~~  
 18 ~~commits a Class D felony.~~

19 **(m) If the department determines during an investigation that**  
 20 **a contractor or subcontractor improperly has classified an**  
 21 **employee as an independent contractor on a construction project,**  
 22 **the contractor or subcontractor may conform to the departmental**  
 23 **decision by properly classifying the employee found to be**  
 24 **misclassified as an independent contractor within seven (7)**  
 25 **business days after notification of the determination by the**  
 26 **department, making all necessary payments on behalf of the**  
 27 **employee, and no fee or penalty is due. In addition, the department**  
 28 **shall revoke the certificate of exemption provided under subsection**  
 29 **(j) to the employee who has not been properly classified. The filing**  
 30 **fee paid under subsection (f) shall not be returned to the individual**  
 31 **who had claimed to be an independent contractor.**

32 **(n) A contractor or subcontractor who continues to improperly**  
 33 **classify an employee as an independent contractor on a**  
 34 **construction project more than seven (7) business days after**  
 35 **notification by the department of the determination of the**  
 36 **misclassification under subsection (m) is subject to a civil penalty**  
 37 **of five hundred dollars (\$500) per employee, to be paid to the**  
 38 **department. The penalties collected under this subsection shall be**  
 39 **deposited into the special account in the state general fund**  
 40 **established under subsection (f) and known as the independent**  
 41 **contractor information account. IC 6-8.1-3-12 applies to the**  
 42 **investigation and IC 6-8.1-5-1 applies to the assessment of tax due**

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1 concerning the determination of the failure to properly classify an  
2 employee under this section.

3 (o) If a contractor or a subcontractor claims to have conformed  
4 to the department's decision under subsection (m), and upon  
5 further investigation the contractor or subcontractor is found to  
6 have continued the improper classification or has not remedied  
7 fully the violation, the contractor or subcontractor is subject  
8 immediately to double the civil penalty under subsection (n) per  
9 employee who has been improperly classified.

10 (p) An independent contractor who fails to file a statement as  
11 required by subsection (d) shall be assessed a civil penalty of five  
12 hundred dollars (\$500) by the department. A civil penalty assessed  
13 and paid under this subsection shall be deposited into the special  
14 account in the state general fund established under subsection (f)  
15 and known as the independent contractor information account.

16 SECTION 2. IC 6-8.1-9-14, AS AMENDED BY P.L.103-2007,  
17 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
18 JULY 1, 2010]: Sec. 14. (a) Except as provided in subsection (n), the  
19 department shall establish, administer, and make available a  
20 centralized debt collection program for use by state agencies to collect  
21 delinquent accounts, charges, fees, loans, taxes, **civil penalties**  
22 **assessed by agencies**, or other indebtedness owed to or being collected  
23 by state agencies. The department's collection facilities shall be  
24 available for use by other state agencies only when resources are  
25 available to the department.

26 (b) The commissioner shall prescribe the appropriate form and  
27 manner in which collection information is to be submitted to the  
28 department.

29 (c) The debt must be delinquent and not subject to litigation, claim,  
30 appeal, or review under the appropriate remedies of a state agency.

31 (d) The department has the authority to collect for the state or  
32 claimant agency (as defined in IC 6-8.1-9.5-1) delinquent accounts,  
33 charges, fees, loans, taxes, or other indebtedness due the state or  
34 claimant agency that has a formal agreement with the department for  
35 central debt collection.

36 (e) The formal agreement must provide that the information  
37 provided to the department be sufficient to establish the obligation in  
38 court and to render the agreement as a legal judgment on behalf of the  
39 state. After transferring a file for collection to the department for  
40 collection, the claimant agency shall terminate all collection procedures  
41 and be available to provide assistance to the department. Upon receipt  
42 of a file for collection, the department shall comply with all applicable

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1 state and federal laws governing collection of the debt.

2 (f) The department may use a claimant agency's statutory authority  
3 to collect the claimant agency's delinquent accounts, charges, fees,  
4 loans, taxes, or other indebtedness owed to the claimant agency.

5 (g) The department's right to credit against taxes due may not be  
6 impaired by any right granted the department or other state agency  
7 under this section.

8 (h) The department of state revenue may charge the claimant agency  
9 a fee not to exceed fifteen percent (15%) of any funds the department  
10 collects for a claimant agency. Notwithstanding any law concerning  
11 delinquent accounts, charges, fees, loans, taxes, or other indebtedness,  
12 the fifteen percent (15%) fee shall be added to the amount due to the  
13 state or claimant agency when the collection is made.

14 (i) Fees collected under subsection (h) shall be retained by the  
15 department after the debt is collected for the claimant agency and are  
16 appropriated to the department for use by the department in  
17 administering this section.

18 (j) The department shall transfer any funds collected from a debtor  
19 to the claimant agency within thirty (30) days after the end of the  
20 month in which the funds were collected.

21 (k) When a claimant agency requests collection by the department,  
22 the claimant agency shall provide the department with:

- 23 (1) the full name;  
24 (2) the Social Security number or federal identification number,  
25 or both;  
26 (3) the last known mailing address; and  
27 (4) additional information that the department may request;  
28 concerning the debtor.

29 (l) The department shall establish a minimum amount that the  
30 department will attempt to collect for the claimant agency.

31 (m) The commissioner shall report, not later than March 1 for the  
32 previous calendar year, to the governor, the budget director, and the  
33 legislative council concerning the implementation of the centralized  
34 debt collection program, the number of debts, the dollar amounts of  
35 debts collected, and an estimate of the future costs and benefits that  
36 may be associated with the collection program. A report to the  
37 legislative council under this subsection must be in an electronic  
38 format under IC 5-14-6.

39 (n) The department may not assess a fee to a state agency or a  
40 custodial parent for seeking a setoff to a state or federal income tax  
41 refund for past due child support.

42 SECTION 3. IC 22-1-1-16 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 16. The commissioner of labor and ~~his~~ **an** authorized representative **of the commissioner of labor** shall have the power and the authority to enter any place of employment for the purpose of collecting facts and statistics relating to the employment of workers and of making inspections for the proper enforcement of all of the labor laws of this state, including IC 5-16-7 **and IC 22-2-15**. No employer or owner shall refuse to admit the commissioner of labor or ~~his~~ authorized representatives **of the commissioner of labor** to ~~his~~ **the employer's or owner's** place of employment.

SECTION 4. IC 22-2-15 IS ADDED TO THE INDIANA CODE AS A **NEW CHAPTER** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]:

**Chapter 15. Employee Defined Classification Act**

**Sec. 1. This chapter applies after December 31, 2010.**

**Sec. 2. This chapter is intended to address the proper classification of employees and independent contractors.**

**Sec. 3. As used in this chapter, "agent of the contractor" means:**

- (1) an individual having management authority or enforcement powers with respect to a practice or policy of the contractor regarding the classification of an employee of the contractor;
- (2) a corporate officer of the contractor; or
- (3) a member of the board of directors of the contractor.

**Sec. 4. (a) As used in this chapter, "board" refers to the worker's compensation board of Indiana created by IC 22-3-1-1(a).**

**(b) The term includes the board, the secretary of the board, employees of the board, and agents authorized by the board to act on behalf of the board.**

**Sec. 5. (a) As used in this chapter, "construction" means any constructing, altering, reconstructing, repairing, rehabilitating, refinishing, refurbishing, remodeling, remediating, renovating, custom fabricating, maintaining, landscaping, improving, wrecking, painting, decorating, demolishing, and adding to or subtracting from any building, structure, airport facility, highway, roadway, street, bridge, alley, sewer, drain, ditch, sewage disposal plant, waterworks, parking facility, railroad, excavation, or other project, development, real property or improvement, or doing any part of these actions.**

**(b) For purposes of subsection (a), it is immaterial whether or not the performance of the work described involves the addition of any material or article of merchandise to, or fabrication into, a**

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1 structure, project, development, real property, or improvement  
2 described in this section.

3 (c) The term defined in subsection (a) includes moving  
4 construction related materials to or from the job site.

5 Sec. 6. (a) As used in this chapter, "contractor" means any sole  
6 proprietor, partnership, firm, corporation, limited liability  
7 company, association, or other legal entity that engages in  
8 construction authorized by law to do business within Indiana.

9 (b) The term includes a general contractor, a subcontractor, and  
10 a lower tiered contractor.

11 (c) The term does not include the state, the federal government,  
12 or a political subdivision.

13 Sec. 7. (a) As used in this chapter, "department" refers to the  
14 department of labor created by IC 22-1-1-1.

15 (b) The term includes the commissioner, employees of the  
16 department of labor, and agents authorized by the commissioner  
17 to act on behalf of the department of labor.

18 Sec. 8. (a) As used in this chapter, "department of revenue"  
19 refers to the department of state revenue established by  
20 IC 6-8.1-2-1.

21 (b) The term includes the commissioner, employees of the  
22 department of revenue, and agents authorized by the commissioner  
23 to act on behalf of the department of revenue.

24 Sec. 9. (a) As used in this chapter, "department of workforce  
25 development" refers to the department of workforce development  
26 established by IC 22-4.1-2-1.

27 (b) The term includes the commissioner, employees of the  
28 department of workforce development, and agents authorized by  
29 the commissioner to act on behalf of the department of workforce  
30 development.

31 Sec. 10. (a) As used in this chapter, "interested party" means a  
32 person with an interest in compliance with this chapter, including  
33 the state or a political subdivision.

34 (b) This section does not require that a person be aggrieved in  
35 order to be considered an interested party.

36 Sec. 11. As used in this chapter, "performing services" means  
37 performing construction services.

38 Sec. 12. As used in this chapter, "political subdivision" has the  
39 meaning set forth in IC 36-1-2-13.

40 Sec. 13. As used in this chapter, "subcontractor" has the  
41 meaning set forth in IC 36-1-12-1.2(3).

42 Sec. 14. An individual performing services for a contractor is

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considered to be an employee of the contractor unless:

(1) the:

(A) individual has been and will continue to be free from control or direction over the performance of the service for the contractor, both under the individual's contract of service and in fact; and

(B) individual is engaged in an independently established trade, occupation, profession, or business;

(2) the individual is determined to be a legitimate sole proprietor or partnership because:

(A) the sole proprietor or partnership is performing the service without substantial direction and control as to the means and manner of providing the services, subject only to the right of the contractor, for whom the service is provided, to specify the desired result;

(B) the sole proprietor or partnership has a substantial investment of capital in the sole proprietorship;

(C) the sole proprietor or partnership owns the capital goods, gains the profits, and bears the losses of the sole proprietorship or partnership;

(D) the sole proprietor or partnership makes its services available to the general public or the business community on a continuing basis;

(E) the sole proprietor or partnership includes services rendered on a federal income tax schedule as an independent business or profession;

(F) the sole proprietor or partnership performs services for the contractor under the sole proprietor's or partnership's name and the contractor pays the sole proprietor or partnership a flat fee or other agreed amount of compensation that is not based on an established rate for any time period of work;

(G) the sole proprietor or partnership obtains and pays for the license or permit in the sole proprietor's or partnership's name when the services being provided require a license or permit;

(H) the sole proprietor or partnership furnishes the tools and equipment necessary to provide the service;

(I) if necessary, the sole proprietor or partnership hires its own employees, pays the employees without reimbursement from the contractor, and reports the employees' income to the Internal Revenue Service;

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(J) the contractor does not:

(i) represent the sole proprietor or partnership as an employee of the contractor to its customers; or

(ii) reimburse the sole proprietor or partnership for its business expenses;

(K) the sole proprietor or partnership has the right to choose to perform similar services for others; and

(L) the sole proprietorship or partnership has a written agreement with the contractor describing the intended business relationship; or

(3) the individual is an owner-operator that provides a motor vehicle and the services of a driver under a written contract that is subject to IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 376, to a motor carrier.

Sec. 15. (a) It is a violation of this chapter for a contractor, an agent of a contractor, or a subcontractor to classify an individual as an independent contractor unless the relationship between the individual and the contractor or subcontractor is excluded under section 14 of this chapter.

(b) A contractor is jointly liable under this chapter for the failure of a subcontractor or a lower tiered subcontractor to properly classify persons performing services as employees.

Sec. 16. (a) A contractor or subcontractor shall maintain records for a period as required in IC 6-3-6-10 and IC 6-8.1-5-4 for an individual performing services for the contractor or subcontractor, regardless whether the individual is classified as:

(1) an employee;

(2) an independent contractor;

(3) a sole proprietor; or

(4) a partnership.

(b) Records to be maintained by the contractor or subcontractor must include all documents related to, or tending to establish the nature of, the relationship between the contractor or subcontractor and an individual performing services for the contractor or subcontractor. Records that must be maintained under this section for an individual performing services for the contractor or subcontractor include, but are not limited to:

(1) the:

(A) name;

(B) address;

(C) phone number; and

(D) Social Security number, individual taxpayer

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- 1 identification number, or federal tax identification
- 2 number;
- 3 (2) the type of work performed and the total number of days
- 4 and hours worked;
- 5 (3) the method, frequency, and basis on which wages were
- 6 paid or payments were made;
- 7 (4) all invoices, billing statements, or other payment records,
- 8 including the dates of payments, and any miscellaneous
- 9 income paid or deductions made;
- 10 (5) copies of all contracts with the individual, agreements with
- 11 the individual, applications for employment by the individual
- 12 with the contractor or subcontractor, and policy or
- 13 employment manuals of the employer for the period that the
- 14 individual performed services for the contractor or
- 15 subcontractor; and
- 16 (6) any federal and state tax documents or other information
- 17 the department considers relevant or necessary.

18 **Sec. 17. (a)** An interested party may file a complaint with the  
 19 department against a contractor or a subcontractor if the  
 20 interested party has a reasonable belief that the contractor or  
 21 subcontractor is in violation of this chapter. The department may  
 22 not investigate a complaint for a violation alleged to have occurred  
 23 before January 1, 2011.

24 **(b)** Upon receiving a complaint under subsection (a), the  
 25 department immediately shall commence an investigation to  
 26 ascertain the facts relating to the violation alleged in the complaint  
 27 and determine whether a violation under this chapter has  
 28 occurred. The investigation may be made by written or oral  
 29 inquiry, field visit, conference, or any method or combination of  
 30 methods the department considers suitable. The department:

- 31 (1) shall conduct investigations, including random inspections,
- 32 in connection with the administration and enforcement of this
- 33 chapter;
- 34 (2) shall enforce this chapter; and
- 35 (3) may hire investigators and other personnel necessary to
- 36 carry out the purpose of this chapter.

37 **(c)** The department has authority to visit and inspect, at all  
 38 reasonable times, a worksite subject to the provisions of this  
 39 chapter and has authority to inspect, at all reasonable times,  
 40 documents related to the determination of whether an individual  
 41 is an independent contractor under section 14 of this chapter.

42 **(d)** The department may:

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- (1) compel, by subpoena, the attendance and testimony of witnesses and the production of books, payrolls, records, papers, and other evidence in an investigation; and
- (2) administer oaths to witnesses.

Sec. 18. (a) The department, the department of workforce development, the department of revenue, and the board shall cooperate under this chapter by sharing information concerning suspected failure to properly classify an independent contractor as an employee by a contractor, an agent of a contractor, or a subcontractor.

(b) Before January 1, 2011, the department, the department of workforce development, the department of revenue, and the board shall develop a joint computer system in order to share information. For purposes of IC 5-14-3-4, information exchanged under this section is confidential.

Sec. 19. (a) Whenever the department determines, after investigation, that a violation of this chapter has occurred, the department shall issue and cause to be served on the contractor or the subcontractor, by posting at the site in a location visible to the workers, if construction is still occurring, an order to cease and desist from further violation of this chapter. If construction has ceased, the notice shall be sent by first class mail to the business address of the contractor as shown in the records of the secretary of state. If a subcontractor has committed the violation, the department shall notify the contractor either at the job site or by first class mail sent to the business address of the contractor as shown in the records of the secretary of state, and to the subcontractor, either at the job site or by first class mail sent to the business address of the subcontractor as shown in the records of the secretary of state. An order issued under this section is a matter of public record.

(b) Upon determining that a contractor, an agent of a contractor, or a subcontractor has classified an employee as an independent contractor in violation of this chapter, the department shall notify:

- (1) the department of workforce development, which shall investigate the contractor's compliance with laws under IC 22-4 and IC 22-4.1;
- (2) the department of revenue, which shall investigate the contractor's compliance with laws under IC 6; and
- (3) the board, which shall investigate the contractor's compliance with laws under IC 22-3.

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1 The department of workforce development, the department of  
2 revenue, and the board have the option to join in the investigation  
3 with the department or to commence a separate investigation.

4 Sec. 20. (a) Seven (7) business days after the department serves  
5 a cease and desist order upon a violator under section 19 of this  
6 chapter, if services are continuing to be performed, the  
7 investigating department shall return to the job site and continue  
8 investigation of the classification of employees. If the department  
9 concludes that the improper classification of employees is  
10 continuing, the department shall impose a civil penalty of five  
11 hundred dollars (\$500) per improperly classified employee against  
12 the contractor, and at the discretion of the department also on the  
13 contractor if a subcontractor has committed the violation. The civil  
14 penalty shall be deposited in the employee classification fund  
15 established by section 23 of this chapter. A civil penalty imposed  
16 under this section is a matter of public record.

17 (b) Fifteen (15) days after the investigating department has  
18 made an investigation at a job site under subsection (a), if services  
19 are continuing to be performed, the department shall return to the  
20 job site and continue the investigation of the proper classification  
21 of employees. If the department concludes that improper  
22 classification of employees is continuing to occur, the department  
23 shall impose a civil penalty of:

24 (1) one thousand dollars (\$1,000) per improperly classified  
25 employee against the contractor or against both the  
26 contractor and the subcontractor, if the subcontractor has  
27 committed the violation, in cases in which the contractor or  
28 subcontractor has employed five (5) or fewer improperly  
29 classified employees;

30 (2) two thousand five hundred dollars (\$2,500) per improperly  
31 classified employee against the contractor or against both the  
32 contractor and the subcontractor, if the subcontractor has  
33 committed the violation, in cases in which the contractor or  
34 subcontractor has employed six (6) to ten (10) improperly  
35 classified employees; and

36 (3) five thousand dollars (\$5,000) per improperly classified  
37 employee against the contractor or against both the  
38 subcontractor and contractor, if the subcontractor has  
39 committed the violation, in cases in which the contractor or  
40 subcontractor has employed more than ten (10) improperly  
41 classified employees.

42 The civil penalty shall be deposited in the employee classification

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1 fund established by section 23 of this chapter. A civil penalty  
2 imposed under this section is a matter of public record.

3 **Sec. 21.** At the time of the imposition of the civil penalty under  
4 section 20(a) and 20(b) of this chapter, the department shall inform  
5 the contractor by written notice, sent by first class mail to the  
6 business address of the contractor as shown in the records of the  
7 secretary of state, that a further investigation by the department  
8 will be made thirty (30) business days after the initiation of the  
9 investigation. The notice also must inform the contractor that if  
10 further investigation reveals the continuing failure to properly  
11 classify employees, the department will take the action set forth in  
12 section 25(b) of this chapter, which will deny the contractor a  
13 contract for a public work project (as defined in IC 36-1-12-2), a  
14 state public works project under IC 4-13.6, or an Indiana  
15 department of transportation public works project under IC 8-23  
16 for four (4) years after the posting of the name of the contractor on  
17 a list kept by the department and posted on the department's  
18 Internet web site.

19 **Sec. 22. (a)** A contractor, an agent of a contractor, or a  
20 subcontractor that receives:

- 21 (1) a cease and desist order;
- 22 (2) a civil penalty assessment; or
- 23 (3) both an order under subdivision (1) and a civil penalty  
24 under subdivision (2);

25 from the department may seek a hearing on the determination by  
26 filing a written petition for review with the department within ten  
27 (10) business days after receipt of the determination and in  
28 accordance with IC 4-21.5-3-2. The petition for review must  
29 contain a statement of the basis for contesting the determination of  
30 the department. The department shall mail a copy of the petition  
31 for review to the complainant and to any interested party  
32 designated on the complaint. The contractor or subcontractor shall  
33 post a copy of the petition for review contemporaneously with the  
34 filing of the petition at or near the place where the alleged violation  
35 occurred or, if the contractor or subcontractor is no longer  
36 performing services at the place where the alleged violation  
37 occurred, at the contractor's or subcontractor's principal place of  
38 business in a conspicuous place where labor notices regularly are  
39 posted. Further, the contractor or subcontractor, when filing the  
40 petition, shall post a bond in an amount sufficient to pay wages,  
41 salary, employment benefits, or other compensation lost or denied  
42 to the individual as determined by the department and civil

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penalties assessed by the department. If the contractor, agent of the contractor, or subcontractor does not file a petition for review and post a bond within the ten (10) business day period, the department's determination is final.

(b) If the contractor, agent of the contractor, or subcontractor files a petition for review of an action under section 25(b) of this chapter within ten (10) business days after notification of the proposed action by the department, the commissioner shall set a hearing on the proposed action. The hearing must take place not more than forty-five (45) calendar days after the receipt of the request for the hearing by the department. The hearing must be held in accordance with IC 4-21.5.

Sec. 23. (a) The employee classification fund is established to provide funds for:

- (1) administering this chapter;
- (2) investigating contractors, agents of contractors, and subcontractors;
- (3) determining whether there is proof to substantiate allegations of failure to properly classify employees; and
- (4) meeting other expenses incurred in carrying out the duties of the department under this chapter.

The fund consists of civil penalties collected by the department under this chapter. The fund shall be administered by the department.

(b) The expenses of administering the fund shall be paid from money in the fund.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. The interest that accrues from these investments shall be deposited in the fund.

(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

Sec. 24. IC 22-1-1-18 applies to a violation of this chapter. When it appears to the department that a contractor, an agent of a contractor, or a subcontractor has violated a valid order of the department issued under this chapter, the department may:

- (1) commence an action through the attorney general; and
- (2) seek an order from the superior or circuit court in the county in which the contractor or subcontractor does business;

mandating the contractor or the subcontractor to obey the order of the department. The failure of the contractor or the

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1 subcontractor to obey a court order obtained under this section is  
2 contempt of court.

3 Sec. 25. (a) The department shall post a summary of the  
4 requirements of this chapter on the Internet web site of the  
5 department.

6 (b) After the imposition of a civil penalty under section 20(b) of  
7 this chapter, thirty (30) business days after the initiation of the  
8 investigation, the department shall place the contractor's or  
9 subcontractor's name on a list maintained on the Internet web site  
10 of the department. A contract for a public work may not be  
11 awarded by a department of the state listed in section 21 of this  
12 chapter or a political subdivision to:

13 (1) a contractor or subcontractor whose name appears on the  
14 list; or

15 (2) a firm, a corporation, a partnership, or an association in  
16 which the contractor or subcontractor has an interest;  
17 until four (4) years after the posting of the contractor's or  
18 subcontractor's name on the list. If a contractor, agent of the  
19 contractor, or subcontractor files a timely petition for review  
20 under section 22(b) of this chapter, the contractor's or  
21 subcontractor's name shall not be added to the list until the  
22 department's determination that the contractor or subcontractor  
23 has violated this chapter is final.

24 Sec. 26. (a) It is a violation of this chapter for a contractor, an  
25 agent of a contractor, or a subcontractor to retaliate through  
26 discharge or in any other manner against a person for exercising  
27 a right granted under this chapter.

28 (b) It is a violation of this chapter for a contractor, an agent of  
29 a contractor, or a subcontractor to retaliate against a person for:

30 (1) making a complaint to a contractor or an agent of a  
31 contractor, to a coworker, to a community organization, to a  
32 state or federal agency, or within a public hearing that rights  
33 guaranteed under this chapter have been violated;

34 (2) causing a proceeding under or related to this chapter to be  
35 instituted; or

36 (3) testifying or preparing to testify in an investigation or  
37 proceeding under this chapter.

38 (c) Retaliation through discharge or in any other manner  
39 subjects a contractor, an agent of a contractor, or a subcontractor  
40 to a private civil action brought by the aggrieved person.

41 (d) In a civil action for unlawful retaliation, the court may  
42 award:

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(1) all legal or equitable relief, or both, as appropriate; and

(2) attorney's fees and costs.

(e) The right of an aggrieved person to bring a civil action under this section terminates three (3) years after the final date of performing services for the contractor or subcontractor by the affected employee. However, the period of limitation established by this subsection is tolled if the contractor, an agent of the contractor, or a subcontractor has deterred a person's exercise of rights under this chapter.

Sec. 27. A person may not waive any provision of this chapter.

Sec. 28. All statutory provisions and penalties existing before July 1, 2010, including fines, that apply to the improper classification of employees as independent contractors remain in effect after June 30, 2010.

Sec. 29. A finding made under this chapter:

(1) is for the purpose of enforcing this chapter; and

(2) is not admissible or binding against a party in a proceeding other than a proceeding under this chapter.

SECTION 5. IC 22-3-5-5.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 5.7. (a) If the worker's compensation board of Indiana discovers that a contractor or subcontractor failed to carry worker's compensation insurance or is unable to furnish to the worker's compensation board satisfactory proof of the contractor's or subcontractor's financial ability to pay the compensation as required under IC 22-3-2-5, section 1 of this chapter, and IC 22-3-7-34, the contractor or subcontractor is subject to a civil penalty of five hundred dollars (\$500), to be assessed and collected by the board.

(b) The worker's compensation board may investigate an allegation of improper classification of an employee as an independent contractor in violation of IC 22-2-15.

(c) If the worker's compensation board, during its investigation, determines that a contractor or subcontractor has failed to properly classify an independent contractor as an employee on a construction project and the contractor or subcontractor fully conforms to the decision of the worker's compensation board, either by:

(1) properly classifying all employees found to be improperly classified as an independent contractor within seven (7) business days after notification by the worker's compensation board of the determination; or

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1           (2) ceasing all work on the construction project within seven  
 2           (7) business days after notification;  
 3       the contractor or subcontractor shall be found to be in  
 4       conformance with the decision of the the worker's compensation  
 5       board, and no fee or penalty is due.

6           (d) If the worker's compensation board discovers, more than  
 7       seven (7) business days after notification by the worker's  
 8       compensation board of the determination under subsection (c), that  
 9       the contractor or subcontractor continues to improperly classify an  
 10      employee as an independent contractor, the contractor or  
 11      subcontractor is subject to a civil penalty of five hundred dollars  
 12      (\$500) per improperly classified employee, to be assessed and  
 13      collected by the board.

14          (e) Civil penalties assessed and collected under this section shall  
 15      be deposited in the worker's compensation supplemental  
 16      administrative fund established by section 6 of this chapter.

17      SECTION 6. IC 22-3-5-6 IS AMENDED TO READ AS FOLLOWS  
 18      [EFFECTIVE JULY 1, 2010]: Sec. 6. (a) The worker's compensation  
 19      supplemental administrative fund is established for the purpose of  
 20      carrying out the administrative purposes and functions of the worker's  
 21      compensation board. The fund consists of fees collected from  
 22      employers under sections 1 through 2 of this chapter and from fees  
 23      collected under IC 22-3-2-14.5, ~~and~~ IC 22-3-7-34.5, ~~and~~  
 24      **IC 22-3-5-5.7.** The fund shall be administered by the worker's  
 25      compensation board. Money in the fund is annually appropriated to the  
 26      worker's compensation board and shall be used for all expenses  
 27      incurred by the worker's compensation board.

28          (b) The money in the fund is not to be used to replace funds  
 29      otherwise appropriated to the board. Money in the fund at the end of  
 30      the state fiscal year does not revert to the state general fund.

31      SECTION 7. IC 22-4.1-4-5 IS ADDED TO THE INDIANA CODE  
 32      AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 33      1, 2010]: Sec. 5. (a) **The department may investigate an allegation  
 34      of improper classification of an employee as an independent  
 35      contractor in violation of IC 22-2-15.**

36          (b) **If the department, during its investigation, determines that  
 37      a contractor or subcontractor has improperly classified an  
 38      employee as an independent contractor on a construction project  
 39      and the contractor or subcontractor fully conforms to the decision  
 40      of the department, either by:**

41              **(1) properly classifying all employees found to be improperly  
 42              classified as an independent contractor within seven (7)**

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1           business days after notification by the department; or  
 2           (2) ceasing all work on the construction project within seven  
 3           (7) business days after the notification;  
 4       the contractor or subcontractor shall be found to be in  
 5       conformance with the decision of the department, and no fee or  
 6       penalty is due.

7       (c) If the department discovers, more than seven (7) business  
 8       days after notification by the department of the determination  
 9       under subsection (b) that the contractor or subcontractor  
 10      continues to improperly classify an employee as an independent  
 11      contractor, the contractor or subcontractor is subject to a civil  
 12      penalty of five hundred dollars (\$500) per improperly classified  
 13      employee, to be assessed and collected by the board.

14      (d) Civil penalties assessed and collected under this section shall  
 15      be deposited in the fund.

16      SECTION 8. IC 34-11-2-13 IS ADDED TO THE INDIANA CODE  
 17      AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 18      1, 2010]: Sec. 13. (a) This section applies beginning January 1,  
 19      2011.

20      (b) The definitions in IC 22-2-15 apply throughout this section.

21      (c) A civil action brought by an aggrieved person under  
 22      IC 22-2-15 must be commenced not later than three (3) years after  
 23      the final date of performing services for the contractor, as  
 24      provided in IC 22-2-15-26(e).

25      SECTION 9. IC 36-1-12-1, AS AMENDED BY P.L.71-2009,  
 26      SECTION 4, AND AS AMENDED BY P.L.99-2009, SECTION 3, IS  
 27      CORRECTED AND AMENDED TO READ AS FOLLOWS  
 28      [EFFECTIVE JULY 1, 2010]: Sec. 1. (a) Except as provided in this  
 29      section, this chapter applies to all public work performed or contracted  
 30      for by:

31           (1) political subdivisions; and

32           (2) their agencies;

33      regardless of whether it is performed on property owned or leased by  
 34      the political subdivision or agency.

35      (b) This chapter does not apply to an officer or agent who, on behalf  
 36      of a municipal utility, maintains, extends, and installs services of the  
 37      utility if the necessary work is done by the employees of the utility.

38      (c) This chapter does not apply to hospitals organized or operated  
 39      under IC 16-22-1 through IC 16-22-5 or IC 16-23-1, unless the public  
 40      work is financed in whole or in part with cumulative building fund  
 41      revenue.

42      (d) This chapter does not apply to tax exempt Indiana nonprofit

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corporations leasing and operating a city market owned by a political subdivision.

(e) As an alternative to this chapter, the governing body of a political subdivision or its agencies may do the following:

(1) Enter into a design-build contract as permitted under IC 5-30.

(2) Participate in a utility efficiency program or ~~may~~ enter into a guaranteed savings contract as permitted under IC 36-1-12.5.

**(3) Enter into a project labor agreement.**

(f) This chapter does not apply to a person that has entered into an operating agreement with a political subdivision or an agency of a political subdivision under IC 5-23.

**(g) In addition to this chapter, IC 22-2-15 applies to contractors, subcontractors, employees, and independent contractors with respect to construction services performed on public work projects.**

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